IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29 .01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION Nos.24539 of 2004 and 45 of 2005
and
W.P.M.P.Nos.29821 to 29823, 29824,2 and 29821 of 2004 &22769 and 43,44 of 2005

Dr.Buddhanesan Sundararaj ... Petitioner in both the petitions

Vs.

1.The Director of Medical and Rural
Health Services, Chennai- 600 006.

2.The Secretary,
Health Department, Secretariat,
Chennai-9 .. Respondents in WP 24539 /04 and Respondents 1 AND 2 IN WP NO. 45/05

3. Dr.D.Chandramohan,
Hospital superintendent,
Govt. Headquarters Hospital,
Dharamapuri.

4. Dr.Bava Fathrudeen,
Senior Civil Surgeon,
ESI Diapensary,Madukkarai,
Coimbatore Dist.

5. Dr.P.Jayabalan,
Senior Civil Surgeon,
Govt. Headquarters Hospital,
Ramanathapuram.

6. Dr.P.Jayalakshmi,
Senior Civil Surgeon,

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ICDS Project IV,
Thousand Lights,
Chennai-6.

7. Dr. S.P.Ramamurthy,
Senior Civil Surgeon Specialist in Medicine,
Govt. Headquarters Hospital,
Periyakulam.

8. Dr.K.Rajagopal
Deputy Director of Medical and Rural
Health Service and Family Welfare,
Tiruchirapalli.

9. Dr.U.Rajendran,
Senior Civil Surgeon specialist in Ortho,
Govt. Headquarters Hospital,
Virudhunagar.

.. Respondents 3 to 9 in WP 45/05

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mrs.R.Margabandhu
For respondents : Mr.C.Thirumaran - G.A. For R1&R2

* * *

COMMON O R D E R

Writ Petition No.24539 of 2004:- The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Reference No.41638/SC1/2/2004, dated 28.07.2004, from the file of the first respondent and quash the same and to forbear the first respondent from initiating any disciplinary proceedings against the petitioner in pursuance of the charge memo under reference No.41638/SC1/2/2004, dated 28.07.2004.

Writ Petition No.45 of 2005 :- The writ petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of G.O.(D) No.1416 Health and Family Welfare (A2) Department, dated 20.12.2004, relating to the promotion and posting order of the respondents 3 to 9, (serial No.13 to 19) issued by the second respondent and quash the same and direct the second respondent to issue promotion and posting order to the

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petitioner as Joint Director of Health Services in the Health and Family Welfare Department, on the basis of the seniority list.

2.Heard the learned counsel for the petitioner as well as for the respondents. Since both the above mentioned writ petitions have arisen under the same facts and circumstances, a common order is passed.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The petitioner is an M.B.B.S., degree holder, and he had joined the Government Medical Service, on 14.09.1976, as an Assistant Surgeon at Primary Health Center, Kiliyanur, in South Arcot District. He was promoted as Senior Assistant Surgeon in Government Pentlant Hospital, Vellore, in the year 1988, with effect from 14.09.1986. While in service, he had applied to do the Post Graduate Course in M.D.Pathology and as he was permitted by the department, he had joined the P.G.Course, on 01.09.1990. On the day of joining, the petitioner had 14 years of service. The usual duration of the course for M.D. is three years. Since there was an exemption of one year, as prescribed by the Government Rules for Medical Officers having more that five years of service, the petitioner had given an application for the exemption, at the time of joining the Post Graduate Course on 01.09.1990. The two years course got completed on 31.08.1992 and till such time no exemption order had been issued and therefore, the petitioner had continued for another 17 days in the third year also.

4.It has been further stated that on completion of his studies, on 31.08.1992, posting orders should have been given to the petitioner by the first respondent, as given to all the Doctors who had completed their two years of study. The petitioner had given several representations to the first respondent requesting for the issue of posting orders. However, no such order was issued.

5.A communication, dated 15.07.1993,was addressed by the Controller of Examination to the Dean Madras Medical College, granting one year exemption in favour of the petitioner with retrospective effect. Another communication, dated 27.07.1993, had stated that the petitioner was deemed to have been relieved from the M.D.Pathology Course, with effect from 01.09.1992. However, the petitioner had not been relieved from the M.D.Pathology Course. Therefore, there was no question of not joining the duty on 01.09.1992. It has been clearly established by the Dean Madras Medical College, in his letter reference No.6748/SGP/991, dated 06.08.1999, addressed to the Director of Medical Education, in which it has been stated that the delay for getting the clarification was purely due to administrative reasons and the delay is not on the part of the petitioner.

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6.It was further stated that the petitioner was given posting orders, on 28.10.1993, and he had joined duty 03.11.1993, at the E.S.I. Dispensary-II, Ambattur. In the said letter, it was noted that the decision regarding regularisation of the period of absence from the P.G.Course was pending. There is no mistake or misconduct on the part of the petitioner, in the course of study since the exemption was granted with retrospective effect from 01.09.1992. It cannot be said that the petitioner had not joined duty on 01.09.1992, since he was not given any posting orders. Even after several representations were made and after the granting of exemption on 15.07.1993, and the relieving order, dated 06.08.1993, no posting orders were given to the petitioner. After several representations were made the petitioner was given an appointment order, dated 28.10.1993, and the petitioner had joined duty on 03.11.1993.

7.The petitioner was given promotion as Civil Surgeon (T) and joined the duty with effect from 12.08.1994. By giving promotion the period 01.09.1992 to 02.11.1993, was deemed to have been regularised. Without such regularisation of service, the petitioner would not have been promoted as Civil Surgeon (T). Further, the petitioner was also promoted as Senior Civil Surgeon and had joined the service on 01.02.1999. However, the annual increments were not given from July, 1993.

8.Even though, the petitioner's name was included in the panel for promotion, which was submitted to the government for necessary approval,the petitioner was served with a show cause notice, dated 08.10.2003.He had submitted his explanation to the show cause notice, on 04.12.2003 The petitioner was served with a charge memo , reference No.41638/SC1/2/2004, dated 28.07.2004 and signed by the Regional Administrative Medical Officer on 12.08.2004 and despatched on 16.08.2004. It was served on the petitioner, on 19.08.2004, ordering an enquiry against him under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules. The issuing of a charge memo after 11 years is arbitrary and illegal and it has been done only with a vindictive, dishonest, and malafide intention of spoiling the career of the petitioner and denying him his promotion as the Joint Director of Medical and Health Services.

9.In the counter affidavit filed by the first respondent, It is stated that the writ petitioner was selected for the P.G.Course in M.D.(Pathology) in Madras Medical College, Chennai, during the year 1990-91. While he was working as an Assistant Surgeon at Government Pentlant Hospital, Vellore, he had joined the P.G.Course on 01.09.1990. As per the rules prevailing then, candidates with more than five years of service were granted one year of exemption

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from the three years duration of the P.G.Course, on their producing a Service Certificate and the relevant documents to the authorities concerned. The petitioner had claimed one year of exemption from the three years P.G.Course, after pursing the course for two years. Since the petitioner had rendered 14 years of service in the Tamil Nadu Medical Services and considering his representation, dated 04.05.1993, the Controller of Examinations, Tamil Nadu Dr.MGR University, Chennai,in his letter No.8275/CE.III/90, dated 15.07.1993, issued orders granting exemption of one year from the three years of the P.G.Course with retrospective effect. Taking into account the exemption order, the Director to Medical Education, in his letter No.20608/ME.II/1/93, dated 06.08.1993, reported that the petitioner was deemed to have been relieved from M.D.(Pathology) Course, with effect from 01.09.1992. Immediately, on receipt of the above letter, the petitioner was given postings to the Government Hospital, Arcot, Vellore District, in the first respondent's order, dated 17.09.1993. However, since the petitioner had requested for transfer due to the family circumstances, he was given postings at E.S.I Dispensary II, Ambattur, by order, dated 28.10.1993. He had joined duty at the E.S.I Dispensary II, Ambattur, on 03.11.1993. Prior to 4.5.1993 (i.e.the date on which he represented for exemption), he had abruptly abstained from the P.G.Course , with effect from 01.09.1992. The petitioner had neither applied for leave nor he had reported before the Head of the Department for posting after staying away from the P.G.Course on 01.09.1992. The petitioner had not applied for exemption at the time of registration for the P.G.Course, by producing Service Certificate to the appropriate authority, or at the time of joining the P.G.Course on 01.09.1990. After pursuing the P.G.Course for two years, he claimed the exemption, belatedly, on 04.05.1993. Based on his representation, one year of exemption was granted with retrospective effect. Therefore, the lapse is on the part of the petitioner and not with the department. Had the petitioner taken prompt efforts to obtain the one year exemption for the P.G.Course in time he would have been properly relieved on 31.08.1992,i.e at the end of two years duration. The Controller of Examinations, Tamil Nadu Dr.M.G.R.Medical University, vide his letter, dated 11.12.2000, had informed the petitioner that he was initially registered for three year duration of the P.G.Course, as he did not produce the Service Certificate. Later, on submission of the requisite certificate, he was accorded an exemption of one year on 15.07.1993. Further, the petitioner had not taken up the exemption till date for which he has stated that he could not appear for the examination of P.G.Course due to his family circumstances. On receipt of the relieving order from the Director of Medical Education, Chennai, the petitioner was posted to Government Hospital, Arcot, Vellore District. But he did not obey the order and requested for posting at E.S.I Dispensary II, Ambattur or Perambur. His request was considered on humanitarian grounds and he was posted at E.S.I

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Dispensary, Ambattur. Though he had made several representations for postings on various dates, his request could not be considered in the absence of proper relief from the P.G.Course.

10.It has been further stated that disciplinary action can be initiated against the Government Servants at any time during their tenure, irrespective of the currency period of delinquency and the contention of the petitioner that the issuing of the charge memo after 11 years is vindictive in nature is not acceptable. It is further submitted that the period of his absence from 01.09.1992 to 02.11.1993, has to be regularised as some kind of leave. There is no provision in the rules that if once the relieving order has been issued with retrospective effect and posting orders have been issued, it would be deemed as though the absence period has been regularised though one year of exemption was accorded with retrospective effect. The period of his absence from 01.09.1992 to 2.11.1993 has to be regularised for the purpose of pension . Further, such unauthorised absence would amount to dereliction of duty coming under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In such circumstances, the claims of the petitioner cannot be accepted.

11.From the records placed before this Court it is seen that the Controller of Examinations, Tamil Nadu Dr.MGR University, Chennai,in his letter, dated 11.12.2000, addressed to the Director of medical and Rural Health Service,Chennai, has informed that Dr.Buddhanesan Sundararaj, had registered for the M.D pathology course for three years duration as he had not produced the Service Certificate. Later, on submission of the Service Certificate, he was granted exemption of one year, on 15.07.1993. He had further stated that the candidate had not taken up the examination, till date. It is also seen that the petitioner had not appeared for examinations due to his family circumstances. Therefore, it is clear that the individual has only completed the course and not passed the examinations, till date. The petitioner was selected for the P.G.Course, as a service candidate, in the paid posts and he was sanctioned pay and allowances for the P.G.Course undergone by him, vide G.O.Ms.No.973(Health), dated 01.09.1992. Having pursued the P.G.Course out of Government money, he has neither passed the examination in time nor taken any efforts to appear for the examination till date. Further, he has also deprived the chance of another candidate by procuring the seat under service quota. The object of the Government to reserve seats for the service candidate in the P.G/Dip.Course is to provide an opportunity to those candidates to apply for the P.G/Dip.Course and to secure seats under the quota so that their services may be utilised in a more effective way in the Tamil Nadu Medical Service.

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12.On analysing the rival contentions raised by the learned counsels representing the petitioner as well as for the respondents and on a perusal of the records made available, it is seen that the petitioner had joined the P.G.Course in M.D.Pathology at Madras Medical College,on 01.09.1990. The course was for a duration of three years. However, the petitioner had applied for exemption of one year, based on the fact that he was a service candidate having completed more than five years in service. However, the petitioner had absented himself from 01.09.1992 to 02.11.1993 without obtaining the necessary approval from the authorities concerned. In such circumstances, the show cause notice dated 08.10.2003, came to be issued by the Director of Medical and Rural Health Services, Chennai, in his proceedings reference No.115867/E4/2/91, calling for explanation from the petitioner for the lapses stated therein,which are as follows:-

> "a. That he had abstained from the Post Graduate Course with effect from 01.09.1992 to 02.11.1993 without submitting any leave application to the HOD.
> b. That he had not reported himself for duty immediately, staying away from the Post Graduate Course.
> c.That having procured the seat under service quota in the paid posts he had not cleared the examination till date."

The petitioner had replied to the show cause notice on 04.12.2003. The Director of Medical and Rural Health Services, Chennai, by proceedings in reference No. No.41638/SC1/2/2004, dated 28.07.2004, had proposed to hold an enquiry against the petitioner, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the charge which reads as follows:-

" CHARGE:-

> That Dr.Buddhanesan Sundararaj, while he was working as Assistant Surgeon at Government Pentlant Hospital, Vellore, selected for P.G.Course in M.D. (Pathology) as a service candidate in Madras Medical College, Chennai,during the year 1990-1991. He joined the P.G.Course on 01.09.1990 and abstained from the P.G.Course from 01.09.1992 to 02.11.1993 without submitting any leave applications. He applied for one year of exemption from the 3 years of P.G.Course only on 04.05.1993 and it was granted with retrospective effect in letter, dated 15.07.1993, of the Controller of Examination Tamil Nadu Dr.MGR Medical University. Accordingly, he was deemed to have been relieved from the

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P.G.Course with effect from 01.09.1992 and released to General side for posting in letter dated 6.8.1993 of the Director to Medical Education, Chennai. He was transferred and posted to E.S.I Dispensary, Ambattur and joined duty on 03.11.1993. Thus, he abruptly stayed away from the P.G.Course from 01.09.1992 to 02.11.1993 without getting proper relief from the higher authorities in time and he neither applied for any leave nor report to the Head of Department for postings."

13.The petitioner was also directed to submit within 15 days of the receipt of this memorandum, a written statement of his defence and also to state whether he desires oral enquiry or to be heard in person or both. The petitioner has come before this Court by way of the present writ petition challenging the said proceedings. Even though, it is seen that the charge memo against the petitioner has been issued after nearly 11 years from the time of the alleged misconduct, there is nothing to show on the part of the petitioner that such a delay by itself could be fatal to the enquiry proceedings proposed to be held against him. Further, there is no proper explanation given by the petitioner as to why he had not taken the examination of P.G.Course in M.D.Pathology stating some family circumstances as the reason. The initial delay for not obtaining the required exemption of one year from the three year P.G.Course seems to be due to the petitioner as he had not submitted the service certificate at the time of applying for the exemption. Eventhough the petitioner had joined the P.G.Course on 01.09.1990 and the two year period was over by 31.08.1992, the petitioner claimed the one year exemption only on 04.05.1993. During the period from 01.09.1992 till he joined duty at E.S.I Dispensary II, Ambattur, on 03.11.1993, the period of absence has not been convincingly explained by the petitioner. In such circumstances, the petitioner had submitted that he is due for promotion as Joint Director of Medical and Health Services. Therefore, the petitioner has not made out a case for this Court to invoke its extraordinary jurisdiction, under Article 226 of the Constitution of India, to grant the relief as prayed for. However, in view of the circumstances in which the issues have arisen for consideration, this Court finds it appropriate to direct the first respondent to complete the enquiry proceedings, after giving sufficient opportunity to the petitioner to put forth his case, and to pass appropriate orders on merits and in accordance with law, without being influenced by any of the observations made by this Court in the present writ petition, within a period of eight weeks from the date of receipt of a copy of this order. With the above directions, the writ petition W.P.No.24539 of 2004 is disposed of.

Since the prayer in the writ petition W.P.No.45 of 2005 is consequential in nature and related to the issue in question in W.P.No.24539 of 2004, the writ petition No.45 of 2005 is also

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disposed of in view of the above order. However, it is open to the petitioner to raise the issues by way of appropriate proceedings, if found necessary by the petitioner, at a later stage. Consequently, the connected WPMPs are closed.

Ssm

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Director of Medical and Rural
Health Services, Chennai- 600 006.

2.The Secretary,
Health Department, Secretariat,
Chennai-9

+ one cc to the Government Pleader sr no. 5549

RL(CO)
NM(12.02.2007)

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and
W.P.M.P.Nos.29821 to 29823, 29824,2 and 29821 of 2004 &22769 and
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